No. 07-153

In the Supreme Court of the United States

SAIFULLAH PARACHA, PETITIONER

v.

GEORGE W. BUSH,
PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, validly divests the federal courts of jurisdiction over habeas corpus petitions filed by aliens detained as enemy combatants at Guantanamo Bay, Cuba.

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OPINION BELOW

The order of the court of appeals (Pet. App. a2-a5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 2007. On July 6, 2007, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 7, 2007, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a citizen of Pakistan who is detained as an enemy combatant at the United States Naval Base at Guantanamo Bay, Cuba. Petitioner has received a

formal adjudicatory hearing before a Combatant Status Review Tribunal (CSRT), and the CSRT found that petitioner is an enemy combatant based on petitioner's affiliation with the al Qaeda terrorist organization. The CSRT reached that conclusion after reviewing evidence of petitioner's involvement in an al Qaeda plan to smuggle explosives into the United States, his possession and management of large sums of al Qaeda money given to him by known al Qaeda operatives, and his recommendation to an al Qaeda operative that nuclear weapons be used against United States troops and suggestion as to where such weapons might be obtained. Gov't C.A. Br. 11-12.

2. Petitioner filed a petition for a writ of habeas corpus, but the district court stayed the case pending the resolution by the court of appeals of the related appeals in *Boumediene* v. *Bush*, No. 05-5062 (D.C. Cir.), and *Al Odah* v. *United States*, No. 05-5064 (D.C. Cir.). Gov't C.A. Br. 11-12. Petitioner appealed the stay, and the case was argued before the court of appeals. Thereafter, the court issued an order directing the parties to file motions to govern further proceedings within 30 days of the court's resolution of *Boumediene* and *Al Odah*.

3. On February 20, 2007, the court of appeals issued its decision in *Boumediene* and *Al Odah*. See *Boumediene* v. *Bush*, 476 F.3d 981 (D.C. Cir.), cert. granted, 127 S. Ct. 3078 (2007). The court held that Section 7 of the Military Commissions Act of 2006 (MCA), Pub. L. No. 109-366, 120 Stat. 2635, applies to all cases filed by aliens detained as enemy combatants, including pending habeas corpus cases, and eliminates federal court jurisdiction over such cases. See *Boumediene*, 476 F.3d at 994. The court further held that the removal of habeas corpus jurisdiction did not violate the Suspension Clause

because the alien detainees held at Guantanamo have no rights under that provision, and because the constitutional right to seek habeas corpus review does not extend to aliens held outside the sovereign territory of the United States. See *id.* at 990-993. As a result, the court ordered that the district courts' decisions in those detainee cases be vacated, and it further ordered the district courts to dismiss the cases for lack of jurisdiction. See *id.* at 994.

4. As directed by the earlier order of the court of appeals, the parties filed motions to govern further proceedings. Petitioner contended that because decades ago he had been granted lawful permanent resident status in the United States, the decision in *Boumediene* did not govern his case. In response, the government explained that petitioner is an alien—the same as the petitioners in *Boumediene*—because he abandoned any lawful permanent resident status by leaving the United States with his family over 20 years ago to move back to Pakistan. Gov't C.A. Mot. to Govern Further Proceedings 9. Accordingly, the government argued that *Boumediene* require dismissal of his habeas petition.

5. On April 9, 2007, the court of appeals dismissed petitioner's habeas corpus action for lack of jurisdiction. Pet. App. a2-a3. On June 29, 2007, this Court granted a writ of certiorari in *Boumediene*. 127 S. Ct. 3078.

ARGUMENT

Petitioner asks (Pet. 8-10) this Court to hold his petition for a writ of certiorari pending its resolution of *Boumediene*. Because the issues in this case are the same as those in *Boumediene*, the petition should be held.

1. Petitioner's case concerns the same issues as those presented by *Boumediene*: whether the MCA removes federal court jurisdiction over habeas corpus petitions filed by aliens at Guantanamo Bay, Cuba; whether aliens detained at Guantanamo Bay have rights under the Suspension Clause of Article I, Section 9, of the Constitution; and whether, if aliens detained at Guantanamo Bay have such rights, the MCA violates the Suspension Clause. Petitioner, an alien detained as an enemy combatant at Guantanamo Bay, is indistinguishable from the petitioners in *Boumediene*. Because this Court's ruling in *Boumediene* will control the disposition of his habeas corpus petition, the petition for a writ of certiorari should be held pending this Court's decision in that case.

2. Petitioner suggests (Pet. 8-10) that he has greater constitutional rights than the *Boumediene* petitioners, and that this case may not be controlled by *Boumediene* because it involves "the distinct context of a lawful permanent resident." Pet. 10. That is incorrect.

Like the petitioners in *Boumediene*, petitioner is not a United States citizen. Instead, he is a citizen of Pakistan. Pet. C.A. App. 3. Although petitioner was once a permanent legal resident of the United States, he abandoned that status over 20 years ago when he permanently returned to his home country of Pakistan. C.A. Supp. App. 1-2; see 8 U.S.C. 1101(a)(20) (defining a lawful permanent resident as one who has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed"). Petitioner therefore is in no different a situation than the other aliens held at Guantanamo Bay.

The District of Columbia Circuit has explained that an individual loses his legal permanent resident status

by "engag[ing] in an abandoning act, like departing the United States for more than a 'temporary visit abroad,' 8 U.S.C. § 1101(a)(27)(A)." *United States* v. *Yakou*, 393 F.3d 231, 239, 240-242 (2005). In *Yakou*, the court found that when an Iraqi national, who had been granted permanent resident status, moved from the United States to England and then to Iraq, he had left the United States for more than a "temporary visit abroad." *Id.* at 241-242. The court further determined that the alien's repeated short trips to the United States were not sufficient to retain his permanent resident status. See *id.* at 242; accord *Katebi* v. *Ashcroft*, 396 F.3d 463, 466-467 (1st Cir. 2005) (key inquiry is whether alien has the "intent to return to the United States as soon as practicable").

In this case, petitioner plainly did not leave the United States for only a "temporary visit abroad." Rather, the record establishes that he permanently left the United States to return home to Pakistan in 1986 with his wife and children, with no intention to return to this country. C.A. Supp. App. 1-2. At that time, he sold his United States residence and bought a house in Karachi, Pakistan, where he lived with his family continuously until his detention. *Ibid.* Between 1986 and 1999, he made brief visits to the United States about once a year, but he did not return to the United States at all between 1999 and 2003, when he was captured overseas. *Ibid.* Petitioner's claim (Pet. 3) that he intends to return to this country at some indefinite future time is insufficient to preserve or reestablish his legal permanent resident status, particularly since it is asserted in this litigation for the first time and long after petitioner's departure from the United States. See *Yakou*, 428 F.3d at 248 (status changes at the time the legal permanent resident

engages in an abandoning act, such as departing the country "with no fixed intent to return'") (quoting *In re Montero*, 14 I. & N. Dec. 399, 401 (B.I.A. 1973)); see also *Singh* v. *Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997) ("The relevant intent is not the intent to return ultimately, but the intent to return to the United States within a relatively short period.").

Petitioner also lacks any ownership interest in any United States business or property. C.A. Supp. App. 2. Petitioner suggests (Pet. 2) that he previously had two travel businesses in New York. But he makes no allegation that those companies remain in business or that he still maintains any ownership interest in either of them.

Nor does petitioner's mere possession of a "green card" make him a current legal permanent resident. There is no requirement that the United States formally revoke an individual's status (or green card) before an individual may lose that status. See *Yakou*, 393 F.3d at 240-242. Rather, the key inquiry is whether petitioner's decision to move to Pakistan with his wife and family in 1986, and to stay there for almost two decades thereafter, was more than merely a temporary visit abroad. By all accounts, it was.

Petitioner cannot distinguish himself from the "aliens without property or presence within the United States" in *Boumediene*, 476 F.3d at 990-991, and there is therefore no doubt that the rationale of the court of appeals' decision in *Boumediene* fully applies to his case.

CONCLUSION

The petition for a writ of certiorari should be held pending the resolution of *Boumediene* v. *Bush*, No. 06-1195, and then disposed of as appropriate in light of that decision.

Respectfully submitted.

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